



"Yellow" Copy
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX
215 Fremont Street
San Francisco, Ca. 94105

MEMORANDUM

DATE: 26 JUL 1988

SUBJECT: TRANSFER OF RCRA WASTE AT CLOSING LAND DISPOSAL UNITS

TO: BRUCE WEDDLE, DIRECTOR
PERMITS AND STATE PROGRAMS DIVISION (WH-563)

FROM: RICH VAILLE, P.E., ASSISTANT DIRECTOR
TOXICS AND WASTE MANAGEMENT DIVISION

Original Signed by:

This memorandum is to confirm Region IX's interpretation of whether EPA may allow transfer and consolidation of waste at closing unlined surface impoundments which retained interim status after November 8, 1988. We have discussed the issue with you, members of the Permit Assistance Team (PAT), the Office of General Counsel (OGC), the Permits Branch, and the Office of Enforcement and Compliance Monitoring (OECM).

The attached letter was sent to the California Department of Health Services in response to a request for a determination on the above issue. As a result of numerous conversations on this issue with EPA HQ and other regions, Region IX believes that interim status surface impoundments which do not meet the minimum technological requirements may not receive waste after November 8, 1988, pursuant to Section 3005(j) of HSWA. We understand that Section 3005(j) applies even at facilities which withdraw their Part B permit applications and intend to close.

Please let us know as soon as possible if our interpretation of the applicability of Section 3005(j) is correct. If you have any questions regarding this memorandum, please contact Christy Camp of my staff at FTS 454-8389.

Enclosure

cc: RCRA Branch Chiefs, Regions I-X
Regional Counsel, Regions I-X
Dwight Hoenig, DHS Region 2
C. David Willis, DHS-HQ
Caroline Cabbias, DHS-HQ

bc: K. Schwinn, T-2-B J. Breitlow
L. Wong, T-2-4 T-2-2
S. Johnson, T-2-4 K. Scheverman
M. Feeley, T-2-A T-2-2
J. Scott, T-2-1 D. Jones, RC-
C. Camp, T-2-1

CONCURRENCES

Symbol	T-2-1	ORC	T-2-4	T-2-4	T-2-B	T-2	T-2-1
Surname	C. Camp	Jones	L. Wong	Johnson	Koh	R	Gordon
Date	7-21-88	7/21/88	7/21/88	7/22/88	7/22/88	7/22	7/26



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

215 Fremont Street
San Francisco, Ca. 94105

26 JUL 1988

In Reply
Refer to: T-2-1

C. David Willis, Deputy Director
Toxic Substances Control Division
California Department of Health Services
400 P Street
Sacramento, CA 95814

Re: Determination on Movement of Hazardous Waste Sludge and
Contaminated Soil. IT Baker (EPA ID #CAD089680250),
IT Vine Hill (EPA ID #CAD000094771) and IT Panoche (EPA ID
#CAD000060012).

Dear Mr. ^{Dave} Willis:

This letter is in response to DHS-NCCS's May 2, 1988 request for interpretation of federal law regarding the transfer of waste from IT Baker to IT Vine Hill during closure. This letter is also in response to DHS-NCCS's July 14, 1988 letter concluding that the IT Vine Hill and IT Baker facilities should be considered one waste management unit and that the entire IT Panoche facility should be considered one waste management unit. These issues have been discussed during numerous meetings and conversations between the EPA and DHS-NCCS offices.

Because a method of closure for the IT Baker and Vine Hill surface impoundments has not yet been approved by any regulatory agency and because the CEQA process has not been completed, EPA has attempted to not limit the available options for the closure of the Baker and Vine Hill impoundments in our research of your question. We have presented DHS-NCCS's question to many different offices at EPA Headquarters (HQ) through various staff and management levels. EPA HQ is sympathetic to our position, and realizes that a strict reading of the statute may not always al-

low EPA or regulated facilities the flexibility they may desire with respect to the closure or operation of interim status surface impoundments.

Section 3005(j) of the Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA) states "(1) Except as provided in paragraph (2), (3), or (4), each surface impoundment in existence on the date of enactment of the Hazardous and Solid Waste Amendments of 1984 and qualifying for the authorization to operate under subsection (e) of this section shall not receive, store or treat hazardous waste after the date four years after such date of enactment unless such surface impoundment is in compliance with the requirements of section 3004(o)(1)(A) which would apply to such impoundment if it were new." A copy of these provisions of HSWA is included for your information.

Section 3005(j) of HSWA would preclude EPA's approval of a closure plan requiring receipt of hazardous waste by an unlined interim status surface impoundment after November 8, 1988. EPA's understanding of the IT Vine Hill/Baker March, 1988 closure plan is that the plan calls for disposal of hazardous waste from IT Baker into the unlined Vine Hill impoundments after November 8, 1988. Because of the importance of the transfer of waste issue, Region IX has transmitted a copy of this letter to EPA Headquarters for confirmation. We expect the same reading we are giving you on this issue from EPA Headquarters, but we have asked Headquarters to confirm it in writing.

You will note that we have not made the argument for defining the impoundments at the Vine Hill and Baker complex as one waste management unit in the memorandum to Headquarters. We also did not argue that the entire Panoche facility is one waste management unit as concluded in DHS-NCCS's July 14, 1988 letter. EPA believes that the concepts of defining different types of waste management units as one unit, as well as defining a number of units as one unit are contrary to the basic RCRA approach of addressing each unit separately for permitting, closure, and enforcement purposes. A reply to NCCS's July 14, 1988 letter has been sent which identifies the numerous regulatory and environmental problems with taking such an approach.

The IT Baker Consent Decree allows transfer of waste between Baker and Vine Hill under certain circumstances. The transfer of waste is being allowed for the purpose of reducing the waste inventory through evaporation. This Consent Decree does not address options for final facility closure or provide an exemption to the requirements of Section 3005(j).

EPA realizes this determination may impact DHS's ability to begin the CEQA process on the IT Vine Hill/Baker March, 1988 closure plan. Our understanding is that DHS needs a substan-

tially approvable closure plan before the CEQA process can be initiated and DHS cannot approve a closure plan before the requirements of CEQA are addressed. EPA's goal is that the CEQA process move forward so the closure plan can be approved. EPA can offer contractor review of the closure plan if the review would help get the CEQA process started earlier. Please have your staff inform us of your strategy to move forward with CEQA. If necessary, we can have a meeting to discuss the schedule. EPA's staff contacts are as follows:

IT Baker Consent Decree - Lily Wong - (415) 974-7517
IT Vine Hill/Baker Closure - Christy Camp - (415) 974-8389
IT Panoche Closure - Karen Scheuermann - (415) 974-7465

Sincerely,



Jeff Zelikson, Director
Toxics and Waste Management Division

Enclosure

cc: Dwight Hoenig, DHS Region 2
Jim Allen, DHS Region 1
Jack Kearns, DHS Regions 3 & 4
Lucille Van Omering, DHS-HQ
Jan Palumbo, DHS-HQ
Caroline Cabilas, DHS-HQ
Steven Ritchie, S.F. Bay RWQCB
Curtis Scott, S.F. Bay RWQCB
Daniel C. Bergman, Contra Costa County Health Services Dept.
Dr. Wendel Brunner, Contra Costa County Health Services Dept.
Mayor Marilyn O'Rourke, City of Benecia
Fran Layton, Shute, Mihaley & Weinberger
Robert Pendoley, Solano Co. Environmental Health
Milton Feldstein, Bay Area Air Quality Management District
Nancy Fahden, Contra Costa Co. Board of Supervisors
Sunne Wright McPeak, Contra Costa Co. Board of Supervisors
Bruce Weddle, EPA HQ
Chris Rhyne, EPA HQ
Ken Shuster, EPA HQ

(including, but not limited to, requirements regarding monitoring, operation, insurance or bonding, financial responsibility, closure, and remedial action), and such requirements as the Administrator deems necessary regarding testing and providing of information to the Administrator with respect to the operation of the facility.

The Administrator may apply the criteria set forth in this paragraph in establishing the conditions of each permit without separate establishment of regulations implementing such criteria.

(2) For the purpose of expediting review and issuance of permits under this subsection, the Administrator may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements established in the administrator's general permit regulations except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures established under section 7004(b)(2) regarding public participation.

(3) The Administrator may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(4) Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

(h) **WASTE MINIMIZATION.**—Effective September 1, 1985, it shall be a condition of any permit issued under this section for the treatment, storage, or disposal of hazardous waste on the premises where such waste was generated that the permittee certify, no less often than annually, that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(i) **INTERIM STATUS FACILITIES RECEIVING WASTES AFTER JULY 26, 1982.**—The standards concerning ground water monitoring, unsaturated zone monitoring, and corrective action, which are applicable under section 3004 to new landfills, surface impoundments, land treatment units, and waste-pile units required to be permitted under subsection (c) shall also apply to any landfill, surface impoundment, land treatment unit, or waste-pile unit qualifying for the authorization to operate under subsection (e) which receives hazardous waste after July 26, 1982.

3005 (j) **INTERIM STATUS SURFACE IMPOUNDMENTS.**—(1) Except as provided in paragraph (2), (3), or (4), each surface impoundment in existence on the date of enactment of the Hazardous and Solid Waste Amendments of 1984 and qualifying for the authorization to operate under subsection (e) of this section shall not receive, store, or treat hazardous waste after the date four years after such date of enactment unless such surface impoundment is in compliance with the requirements of section 3004(o)(1)(A) which would apply to such impoundment if it were new.

(2) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) has at least one liner, for which there is no evidence that such liner is leaking; (B) is located more than one-quarter mile from an underground source of drinking water; and (C) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section.

(3) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) contains treated waste water during the secondary or subsequent phases of an aggressive biological treatment facility subject to a permit issued under section 404 of the Clean Water Act (or which holds such treated waste water after treatment and prior to discharge); (B) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section; and (C)(i) is part of a facility in compliance with section 301(b)(2) of the Clean Water Act, or (ii) in the case of a facility for which no effluent guidelines required under section 304(b)(2) of the Clean Water Act are in effect and no permit under section 402(a)(1) of such Act implementing section 301(b)(2) of such Act has been issued, is part of a facility in compliance with a permit under section 403 of such Act, which is achieving significant degradation of toxic pollutants and hazardous constituents contained in the untreated waste stream and which has identified those toxic pollutants and hazardous constituents in the untreated waste stream to the appropriate permitting authority.

(4) The Administrator (or the State, in the case of a State with an authorized program), after notice and opportunity for comment, may modify the requirements of paragraph (1) for any surface impoundment if the owner or operator demonstrates that such surface impoundment is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time. The Administrator or the State shall take into account locational criteria established under section 3004(o)(7).

(5) The owner or operator of any surface impoundment potentially subject to paragraph (1) who has reason to believe that on the basis of paragraph (2), (3), or (4) such surface impoundment is not required to comply with the requirements of paragraph (1), shall apply to the Administrator (or the State, in the case of a State with an authorized program) not later than twenty-four months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 for a determination of the applicability of paragraph (1) (in the case of paragraph (2) or (3)) or for a modification of the requirements of paragraph (1) (in the case of paragraph (4)), with respect to such surface impoundment. Such owner or operator shall provide, with such application, evidence pertinent to such decision, including:

(A) an application for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility, if not previously submitted;

(B) evidence as to compliance with all applicable ground water monitoring requirements and the information and analysis from such monitoring;

(l) **BAN ON DUST SUPPRESSION.**—The use of waste or used oil or other material, which is contaminated or mixed with dioxin or any other hazardous waste identified or listed under section 3001 (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

(m) **TREATMENT STANDARDS FOR WASTES SUBJECT TO LAND DISPOSAL PROHIBITION.**—(1) Simultaneously with the promulgation of regulations under subsection (d), (e), (f), or (g) prohibiting one or more methods of land disposal of a particular hazardous waste, and as appropriate thereafter, the Administrator shall, after notice and an opportunity for hearings and after consultation with appropriate Federal and State agencies, promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

(2) If such hazardous waste has been treated to the level or by a method specified in regulations promulgated under this subsection, such waste or residue thereof shall not be subject to any prohibition promulgated under subsection (d), (e), (f), or (g) and may be disposed of in a land disposal facility which meets the requirements of this subtitle. Any regulations promulgated under this subsection for a particular hazardous waste shall become effective on the same date as any applicable prohibition promulgated under subsection (d), (e), (f), or (g).

(n) **AIR EMISSIONS.**—Not later than thirty months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984, the Administrator shall promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment.

§ 3004 (o) **MINIMUM TECHNOLOGICAL REQUIREMENTS.**—The regulations under subsection (a) of this section shall be revised from time to time to take into account improvements in the technology of control and measurement. At a minimum, such regulations shall require, and a permit issued pursuant to section 3005(c) after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 by the Administrator or a State shall require—

(A) for each new landfill or surface impoundment, each new landfill or surface impoundment unit at an existing facility, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit, for which an application for a final determination regarding issuance of a permit under section 3005(c) is received after the date of enactment of the Hazardous and Solid Waste Amendments of 1984—

(i) the installation of two or more liners and a leachate collection system above (in the case of a landfill) and between such liners; and

(ii) ground water monitoring.

(B) for each incinerator which receives a permit under section 3005(c) after the date of enactment of the Hazardous and Solid



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Toxic Substances Control Division
California Department of Health Services
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Surname	C. Camp	Jones	L. Wong	Jones	Keb	R	H. H. T.	(S. H. T.)	
Date	7-2-88	7/21/88	7/21/88	7/22/88	7/22/88	7/22/88	7/25/88	7/26/88	

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Sincerely,

ORIGINAL SIGNED BY:

LAURA YOSHII *for*

Jeff Zelikson, Director
Toxics and Waste Management Division

Enclosure

cc: Dwight Hoenig, DHS Region 2
Jim Allen, DHS Region 1
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(including, but not limited to, requirements regarding monitoring, operation, insurance or bonding, financial responsibility, closure, and remedial action), and such requirements as the Administrator deems necessary regarding testing and providing of information to the Administrator with respect to the operation of the facility.

The Administrator may apply the criteria set forth in this paragraph in establishing the conditions of each permit without separate establishment of regulations implementing such criteria.

(2) For the purpose of expediting review and issuance of permits under this subsection, the Administrator may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements established in the administrator's general permit regulations except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures established under section 7004(b)(2) regarding public participation.

(3) The Administrator may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(4) Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

(h) **WASTE MINIMIZATION.**—Effective September 1, 1985, it shall be a condition of any permit issued under this section for the treatment, storage, or disposal of hazardous waste on the premises where such waste was generated that the permittee certify, no less often than annually, that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(i) **INTERIM STATUS FACILITIES RECEIVING WASTES AFTER JULY 26, 1982.**—The standards concerning ground water monitoring, unsaturated zone monitoring, and corrective action, which are applicable under section 3004 to new landfills, surface impoundments, land treatment units, and waste-pile units required to be permitted under subsection (c) shall also apply to any landfill, surface impoundment, land treatment unit, or waste-pile unit qualifying for the authorization to operate under subsection (e) which receives hazardous waste after July 26, 1982.

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(2) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) has at least one liner, for which there is no evidence that such liner is leaking; (B) is located more than one-quarter mile from an underground source of drinking water; and (C) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section.

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(4) The Administrator (or the State, in the case of a State with an authorized program), after notice and opportunity for comment, may modify the requirements of paragraph (1) for any surface impoundment if the owner or operator demonstrates that such surface impoundment is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time. The Administrator or the State shall take into account locational criteria established under section 3004(o)(7).

(5) The owner of operator of any surface impoundment potentially subject to paragraph (1) who has reason to believe that on the basis of paragraph (2), (3), or (4) such surface impoundment is not required to comply with the requirements of paragraph (1), shall apply to the Administrator (or the State, in the case of a State with an authorized program) not later than twenty-four months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 for a determination of the applicability of paragraph (1) (in the case of paragraph (2) or (3)) or for a modification of the requirements of paragraph (1) (in the case of paragraph (4)), with respect to such surface impoundment. Such owner of operator shall provide, with such application, evidence pertinent to such decision, including:

(A) an application for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility, if not previously submitted;

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(l) **BAN ON DUST SUPPRESSION.**—The use of waste or used oil or other material, which is contaminated or mixed with dioxin or any other hazardous waste identified or listed under section 3001 (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

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(2) If such hazardous waste has been treated to the level or by a method specified in regulations promulgated under this subsection, such waste or residue thereof shall not be subject to any prohibition promulgated under subsection (d), (e), (f), or (g) and may be disposed of in a land disposal facility which meets the requirements of this subtitle. Any regulations promulgated under this subsection for a particular hazardous waste shall become effective on the same date as any applicable prohibition promulgated under subsection (d), (e), (f), or (g).

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(A) for each new landfill or surface impoundment, each new landfill or surface impoundment unit at an existing facility, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit, for which an application for a final determination regarding issuance of a permit under section 3005(c) is received after the date of enactment of the Hazardous and Solid Waste Amendments of 1984—

(i) the installation of two or more liners and a leachate collection system above (in the case of a landfill) and between such liners; and

(ii) ground water monitoring.

(B) for each incinerator which receives a permit under section 3005(c) after the date of enactment of the Hazardous and Solid